

AGP-4. DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES

(a) The Contractor, in connection with this Contract, shall:

- (1) Comply with the requirements of 48 CFR, Subpart 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, 48 CFR, Subpart 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, 48 CFR, Subpart 9904.405, Accounting for unallowable Costs, and 48 CFR, Subpart 9904.406, Cost Accounting Standard - Cost Accounting Period, as indicated in 48 CFR, Part 9904, and any corresponding implementing or supplementing provisions in the NFS in effect on the date of award of this Contract.
- (2) (CAS-covered contracts only.) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR, Subparts 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

NOTE (1): Subcontractors shall be required to submit their Disclosure Statements to the Contractor.

However, if a subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Contractor the date of the Statement and the address of the Contracting Officer.

NOTE (2): In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Contractor or higher tier subcontractor, the Contractor may authorize direct submission of the subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability if it or a subcontractor fails to comply with an applicable Cost Accounting Standard (CAS) or to follow any practice disclosed pursuant to this paragraph and such failure results in any increased costs paid by the United States. In view of the foregoing and since the Contract may be subject to adjustment under this Article by reason of any failure to comply with rules, regulations, and Standards as specified in 48 CFR, Subpart 9903.3, and 48 CFR, Subpart 9904, and any corresponding implementing or supplementing provisions in the NFS in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Institute. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

NOTE (3): The terms defined in 48 CFR, Subpart 9903.301, Definitions, FAR 31.001 in said 48 CFR, Subpart 9903.301, and any corresponding implementing or supplementing provisions in the NFS, shall have the same meanings in this Article. As there defined, "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two persons not associated with each other or such Contractor or subcontractor, providing (i) the solicitation to all competitors is identical, (ii) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (iii) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

- (3) (A) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this Contract, and the Disclosure Statement, if affected, must be amended accordingly.

- (B) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR, Subpart 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the "Changes" Article of this Contract. In the absence of the required finding, no agreement may be made under this Contract Article that will increase costs paid by the United States.
- (4) Agree to an adjustment of the Contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.
- (b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR, Parts 9903 and 9904 and as to any cost adjustment demanded by the United States, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute between the Institute and the Contracting Officer concerning a question of fact within the meaning of the "Disputes" clause of the Prime Contract.
- (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this Article.
- (d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this Article, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that:
- (1) If the subcontract is awarded to a business unit which pursuant to 48 CFR, Subpart 9903.201, is required to follow all CAS, the clause entitled "Cost Accounting Standards," set forth in FAR 52.230-2 and any corresponding implementing or supplementing provisions in the NFS shall be inserted in lieu of this Article; or
- (2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on:
- (A) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- (B) Price set by law or regulation; or
- (3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1, and any corresponding implementing or supplementing provisions in the NFS.